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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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45464	7590	09/26/2006	EXAMINER	
JACOBS & KIM LLP 1050 WINTER STREET SUITE 1000, #1082 WALTHAM, MA 02451-1401			DURAN, ARTHUR D	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/899,357

Applicant(s)

POWELL ET AL.

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-20 have been examined.

Response to Amendment

2. The Amendment filed on 9/5/2006 is insufficient to overcome the prior rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Independent Claims 1 and 11 recite the limitation "the manufacturer". There is insufficient antecedent basis for this limitation in the claim. No Manufacturer is priorly mentioned in the claims. Since these claims 1 and 11 are independent, all claims 1-20 are without antecedent basis and, therefore, rejected under 35 USC 112.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer (20010047299) in view of Solomon (6,847,935).

Claim 1, 6, 11, 16: Brewer discloses a system for managing commerce comprising:

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an interface for sending and receiving data to and from the Internet (Fig. 1; Fig. 13; Fig. 14; [30]);

means for storing data representative of a seller, a distributor and a purchaser ([5], [64],[66]);

means for storing data representative of a product available from the seller (Fig. 2; Fig. 7);

means for storing data representative of a contract between the seller and the purchaser (Fig. 2; Abstract);

means for storing data representative of a purchase of the product by the purchaser from the seller (Fig. 7; Fig. 8);

means for storing data representative of the user purchasing and receiving the product (Fig. 7, Fig. 8, Fig. 10, Fig. 18).;

means for determining a rebate due to the purchaser from the seller (Fig. 7; Fig. 8; Fig. 9; Figl 10);

means for transferring a payment received from the purchaser to the seller ([83], 'calculate and pay a rebate. . .within 30 days; [32], 'rebate payment is a cyclical process'); and

means for determining a chargeback payment due from the manufacturer to the other entities ([32], [64]),

wherein the seller, the distributor and the purchaser access the system using the Internet (Fig. 1; Fig. 13; Fig. 14; [30]; [107]).

Brewer further discloses means for storing data representative of a seller, a distributor, a group purchasing organization and an end user (Fig. 2; Fig. 3; [61], [64], [66]);

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Brewer does not explicitly disclose shipment of the product from the distributor to the purchaser.

However, Brewer discloses that the user purchases and receives the product (Fig. 7, Fig. 8, Fig. 10, Fig. 18).

And, Brewer discloses manufacturers, distributors, and wholesalers ([64]; [66], 'The manufacturer, the distributor, the wholesaler, the retailer, the buying group manager and the end customer, may all have various levels of access to this information').

And, Solomon discloses an Internet based rebate processing center for manufacturers, distributors, and users (Abstract) and Solomon discloses storing data representative of a shipment of the product from the manufacturer or distributor or other source to the purchaser (col 14, line 65-col 15, line 12).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Solomon's manufacturer or distributor shipped products to Brewer's products purchased and provided to the user and Brewer's manufacturer, distributor, wholesaler, and user. One would have been motivated to do this in order to present a way for the products to be attained by the user.

Brewer does not explicitly disclose determining a charge back payment due from the manufacturer to the distributor.

However, Brewer further discloses means for determining a charge back payment due from the manufacturer to the direct customer or to the wholesaler ([32]).

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As noted above, Brewer discloses manufacturers, distributors, and wholesalers ([64]; [66], 'The manufacturer, the distributor, the wholesaler, the retailer, the buying group manager and the end customer, may all have various levels of access to this information').

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Brewer's wholesaler can be a distributor and, therefore, receive chargebacks. One would have been motivated to do this in order to present further features as to the paying of chargebacks and permit a more useable and accurate rebate system.

Also, Examiner notes from the Applicant's Specification (Powell, 20020055850; Fig. 2, Paragraph [0020]) that sellers of goods can be manufacturers.

Additionally, Brewer discloses that the different entities can see contract related information ([64, 66, 68]). Brewer further discloses storing information related to chargebacks (above rejection, Abstract, and [32, 69, 83]).

Brewer is oriented towards e-commerce (Brewer, [74]) and so is Solomon (Solomon, Fig. 1, col 3, lines 19-42).

Brewer is oriented to a 3-entity or more commercial chain (Brewer, [64, 66]) and Solomon is oriented to a 3-entity or more commercial chain (Solomon, col 3, lines 19-42).

Claim 2, 7, 12, 17: Brewer and Solomon disclose the system of claim 1. Brewer further discloses that data representative of a contract comprises at least two party names, a product, a price, a date, and a term (Fig. 2, 'Contract and Discounts Operational Reporting System'; Fig. 8, 'Rebate Period', 'Date').

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Claim 3, 8, 13, 18: Brewer and Solomon disclose the system the system of claim 2.

Brewer further discloses that data representative of a contract further comprises a rebate due from the seller to the purchaser or group purchasing organization (Fig. 7; Fig. 2; Fig. 8).

Claim 4, 9, 14, 19: Brewer and Solomon disclose the system he system of claim 1.

Brewer further discloses means for determining a trade fund balance for each product purchased by the purchaser from the seller; and means for updating the trade fund balance when a rebate is processed (Fig. 7; Fig. 10; Fig. 16; Fig. 17; Paragraphs [21, 18, 30, 34, 35, 53, 60, 61, 62]; and below):

“[0066] As shown in FIG. 10, historical purchasing and actual rebates earned information (e.g., using the Web site or an active control) may be viewed. (This information may be viewed at any level. The manufacturer, the wholesaler, the distributor, the retailer, the buying group manager and the end customer, may all have various levels of access to this information. As would be appreciated by one of ordinary skill in the art, different interfaces and data may be available to each viewer.) This information will be available in various forms (e.g., tabular reports, trending charts, etc.) and can be extracted for download (e.g., to Microsoft Excel based spreadsheets or a generic data file format).

[0097] Actual Rebate History: Contract Sales, Market Share percentage, Contract Price Group rebate percentage, and actual paid rebate by product line will be kept on available on the E-commerce DB for the past two complete rebate periods. This information will be used for budgeting of pharmaceutical purchases and rebate accrual by customers, and reference information for sales.

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[0098] "Rebate Opportunity" Analysis: The projected rebate result set will be used to drive the sensitivity analysis engine. A report (e.g., spreadsheet or Web page) for each entity will be generated with the result set and a capability to change the market share to understand how sales must change in order to attain the next level of rebate, i.e. attain the next higher contract price group. This analysis engine lets the customer go up and down the rebate tier structure to evaluate optimistic and pessimistic performance".

Claim 5, 10, 15, 20: Brewer and Solomon disclose the system of claim 1. Brewer further discloses that the trade fund balance further comprises an actual trade fund balance and a budgeted trade fund balance ([0097]).

Response to Arguments

5. Applicant's arguments with respect to claims 1-20 have been considered but are not found persuasive.

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

As Applicant notes on page 8 of the Applicant's Remarks dated 9/5/2006, "While sellers of goods can be manufacturers. . .". Hence, Applicant's claims make few distinctions on the difference between the distributors, sellers, or manufacturers or if there are different entities.

Also, Applicant states on page 7 that the combination of the prior art does not render obvious:

“1) includes storage and processing of the relationship between manufacturer and distributor in a 3-entity commercial chain of manufacturer, distributor and purchaser, not merely a 2-entity commercial chain,

2) includes awareness of chargeback processing between manufacturer and distributor, and

3) includes handling of purchase payments via the Internet.”

However, in response to item 3), Brewer is oriented towards e-commerce (Brewer, [74]) and so is Solomon (Solomon, Fig. 1, col 3, lines 19-42).

In response to item 1), Brewer is oriented to a 3-entity or more commercial chain (Brewer, [64, 66]) and Solomon is oriented to a 3-entity or more commercial chain (Solomon, col 3, lines 19-42).

In response to item 2), Brewer renders it obvious to provide chargebacks from a manufacturer to a wholesaler/distributor (Brewer, Abstract, Paragraphs [32, 69, 83]). Also, please see the 35 USC 103 obviousness statement concerning chargebacks in the rejection of the independent claim above.

Examiner further notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. In re Jacobv, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby. Also, the conclusion of obviousness may

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be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. In re Bozek, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F.2d 656, USPQ 12 (CCPA 1977).

Also, Examiner notes that Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Also, in regards to the new features added to the claims on 9/5/2006, please see the additional citations added to the rejection of the independent claims above.

Hence, the combination of the prior art renders obvious the features of the Applicant's claims.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a) Schulze (20020055875) discloses manufacturers, retailers and that it is old and well known to pay chargebacks between the manufacturer and retailer;

b) Postrel (20040098317) discloses manufacturers and distributors and contracts and the providing of goods (Fig. 4; Fig. 5; and below):

“[0056] In another aspect of the invention, an electronic bartering system is

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implemented, wherein product manufacturers, producers, distributors, etc. can provide surplus or overstocked goods for liquidation into the chain of supply of the system and exchange then for points as described herein. This provides an inventory management and liquidation system for these manufacturers and sellers”.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Arthur Duran', is positioned above the printed name.

Arthur Duran
Primary Examiner
9/11/2006